

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE AMERICAN INTERNATIONAL GROUP, : No. 08 CV 4772 (LTS) (DCF)  
INC. 2008 SECURITIES LITIGATION :  
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**JOINDER OF AMERICAN INTERNATIONAL GROUP, INC. AND THE EXECUTIVE  
DEFENDANTS IN THE SECURITIES ACT DEFENDANTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Defendants American International Group, Inc. ("AIG") and the Executive Defendants<sup>1</sup> hereby join and incorporate by reference the Motion for Judgment on the Pleadings filed on behalf of PricewaterhouseCoopers LLP ("PwC"), the Director Defendants, and the Underwriter Defendants (together, the "Securities Act Defendants") and all filings in support of that Motion as follows: (1) Motion for Judgment on the Pleadings (ECF 309, filed Oct. 12, 2011) (the "Motion"); (2) Memorandum of Law in Support of the Motion (ECF 310, filed Oct. 12, 2011); (3) Declaration of Antony L. Ryan in Support of the Motion (ECF 311, filed Oct. 12, 2011), and accompanying exhibits; (4) Reply Memorandum of Law in Support of the Motion (ECF 322, filed Dec. 16, 2011); (5) Declaration of Antony L. Ryan in Support of the Motion (ECF 323, filed Dec. 16, 2011), and accompanying exhibits; (6) letter addressed to Judge Laura

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<sup>1</sup> The Executive Defendants are Martin J. Sullivan, Steven J. Bensinser, David L. Herzog (together, the "Signing Executive Defendants"), Joseph Cassano, Andrew Forster, Alan Frost, and Robert Lewis. Lead Plaintiff brings claims under Section 11 of the Securities Act of 1933 (the "Securities Act") against the Signing Executive Defendants, as well as claims under Section 15 against all Executive Defendants. Terms not defined herein have the meaning set forth in the Consolidated Class Action Complaint ("CCAC").

Taylor Swain from Antony L. Ryan dated April 6, 2012 (ECF 345, filed Apr. 17, 2012); and (7) letter addressed to Judge Laura Taylor Swain from Antony L. Ryan dated August 17, 2012.

Although the Court denied defendants' motions to dismiss the CCAC in this case, there has been an intervening change in the law since the Court's decision, beginning with the Second Circuit's decision in *Fait v. Regions Fin. Corp.*, 655 F.3d 105 (2d Cir. 2011), which this Court did not have the opportunity to consider in rendering its decision. The pending Motion for Judgment on the Pleadings seeks dismissal of Lead Plaintiff's claims under the Securities Act and judgment in favor of the Securities Act Defendants based on the Second Circuit's decision in *Fait*, which held that statements of opinion, such as estimates of goodwill, are not actionable under the Securities Act unless plaintiff alleges that each such statement was "both objectively false and disbelieved by the defendant at the time it was expressed."<sup>2</sup>

Under *Fait* and its progeny, the statements of opinion at issue about AIG's subprime exposure, valuation loss estimates and subprime-related risks are statements of opinion subject to the *Fait* standard.<sup>3</sup> However, the CCAC explicitly disclaims for purposes of Lead Plaintiff's Securities Act claims any effort to allege that defendants disbelieved the statements of opinion at issue as required under *Fait*. The CCAC specifically alleges that: "The Securities Act claims are not based on any knowing or reckless misconduct on behalf of the Defendants – *i.e.*, they do not allege, and do not sound in, fraud – and Plaintiffs specifically disclaim any

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<sup>2</sup> *Id.* at 110 (citing *Virginia Bankshares v. Sandberg*, 501 U.S. 1083, 1095-96 (1991)).

<sup>3</sup> See, e.g., *NECA-IBEW Pension Trust Fund v. Bank of Am. Corp.*, No. 10-CV-0440 (S.D.N.Y. Mar. 16, 2012) (Docket No. 65) ("*BofA*") (adopting recommendation of Mag. J. Pitman, 2012 WL 3191860 (S.D.N.Y. Feb. 9, 2012)) (statements about Bank of America's residential mortgage exposure and valuation losses were statements of opinion); *In re Deutsche Bank AG Sec. Litig.*, 2012 WL 3297730 (S.D.N.Y. Aug. 10, 2012) (same with respect to Deutsche Bank).

allegations of fraud in these non-fraud claims under the Securities Act.”<sup>4</sup> Just as in the recent decisions in *BofA* and *Deutsche Bank* following *Fait*, “[t]his alone is fatal to [Lead] Plaintiffs’ claims.”<sup>5</sup>

Pursuant to Fed. R. Civ. P. 12(c), for these reasons and all of the reasons set forth in the Securities Act Defendants’ Motion papers adopted and incorporated herein, AIG and the Executive Defendants respectfully request that the Court grant the Motion for Judgment on the Pleadings, dismiss Lead Plaintiff’s Securities Act claims and enter judgment in favor of all defendants as to those claims.

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<sup>4</sup> CCAC at ¶ 580.

<sup>5</sup> *Deutsche Bank*, 2012 WL 3297730, at \*2.

Dated: New York, New York  
September 10, 2012

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